

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-594
)	
Wilkins Communications Network, Inc.)	NAL/Acct. No. 200332560003
Licensee of AM Radio Station KLNG in)	
Council Bluffs, Iowa)	FRN 0006-1527-71
Spartanburg, South Carolina)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 3, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Wilkins Communications Network, Inc., licensee of AM radio station KLNG, Council Bluffs, Iowa, apparently liable for a forfeiture in the amount of three thousand five hundred dollars (\$3,500) for willful violation of Sections 11.61(a) and 73.3526(e)(6) of the Commission’s Rules (“Rules”).¹ Specifically, we find Wilkins Communications Network, Inc. apparently liable for failing to transmit EAS tests and for failing to maintain the most recent requests for political time in the public file.

II. BACKGROUND

2. On August 15, 2002, an agent from the FCC Enforcement Bureau’s Kansas City Field Office inspected radio station KLNG, Council Bluffs, Iowa. The agent observed that the station’s logs showed no record that the station had transmitted EAS tests since October, 2001. The station manager and chief operator stated that the station had run no EAS tests since September 11, 2001. In addition, the station’s public file did not contain the most recent requests for political time. The station manager stated that the station had aired political advertising during August, 2002.

III. DISCUSSION

3. Section 11.61(a) of the Rules requires broadcast stations to conduct weekly and monthly tests of the EAS. Section 11.61(b)² of the Rules requires that entries be made in the broadcast station records of EAS tests received and transmitted. At the time of inspection on August 15, 2002, the KLNG logs contained no indication that required EAS tests were transmitted since October, 2001. Station personnel stated that no tests had been transmitted since September of 2001.³

¹ 47 C.F.R. §§ 11.61(a), 73.3526(e)(6).

² 47 C.F.R. § 11.61(b).

³ On September 18, 2001, the FCC’s Enforcement Bureau released a Public Notice stating that, in response

4. Section 73.3526(e)(6) requires all licensees to keep a record of requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests and the charges made, if any, if the request is granted. All records shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.⁴ Inspection of the public file on August 15, 2002, could not locate any political files for the August, 2002 election even though the station manager stated that the station had aired political advertising.

5. Based on the evidence before us, we find that KLNG willfully⁵ violated Sections 11.61(a) and 73.3526(e)(6) of the Commission's Rules by failing to conduct required EAS tests and failing to maintain copies of requests for political advertising in the public file. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for violation of public file rules is \$10,000 per violation. The Rules do not establish a base forfeiture amount for violating the Commission's rules requiring EAS tests. Therefore, we must determine what an appropriate forfeiture amount should be for this violation.⁷ The requirement that broadcast stations conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. Section 1.80 of the Rules sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring.⁸ Therefore, we will assess the base forfeiture for failing to conduct EAS tests in the amount of \$2,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"),⁹ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Because KLNG's public file was present but missing a portion of the required items, a downward adjustment of the base forfeiture amount for this violation from \$10,000 to \$1,500 is warranted. Considering the entire record and applying the factors listed above, this case warrants a forfeiture of \$3,500.

to a request by the Federal Emergency Management Agency, and in order to avoid potential public confusion or fear in connection with the terrorist attacks of September 11, 2001, the Bureau would not enforce EAS testing requirements from that date until October 2, 2001. *See Public Notice, EAS Routine Testing*, DA 01-2183, (rel. September 18, 2001).

⁴ See 47 C.F.R. § 73.1943.

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the Forfeiture Policy Statement and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(D).

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹⁰ and Sections 0.111, 0.311 and 1.80 of the Rules,¹¹ Wilkins Communications Network, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand five hundred dollars (\$3,500) for willful violation of Sections 11.61(a) and 73.3526(e)(6) of the Rules by failing to transmit EAS tests and failing to maintain the political file in the public inspection file.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Wilkins Communications Network, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Request for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹² See 47 C.F.R. § 1.1914.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Wilkins Communications Network, Inc., PO Box 444, Spartanburg, SC 29304.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director, Kansas City Office
Enforcement Bureau

Attachment